

STATE WATER RESOURCES CONTROL BOARD  
WORKSHOP SESSION – DIVISION OF WATER QUALITY  
NOVEMBER 3, 2004

**ITEM**

**SUBJECT**

CONSIDERATION OF ADOPTING A GENERAL ORDER REQUIRING OWNERS AND OPERATORS OF SPECIFIED VESSEL TERMINALS LOCATED IN NEWPORT BAY AND HUNTINGTON HARBOUR TO INSTALL, MAINTAIN, AND OPERATE PUMPOUT FACILITIES AND DUMP STATIONS WHERE NECESSARY TO PROTECT WATER QUALITY

**DISCUSSION**

Newport Bay and Huntington Harbour were designated No Discharge Zones (NDZ) by the U.S. Environmental Protection Agency (U.S. EPA) in 1976. A NDZ is an area of a water body or an entire water body into which the discharge of treated or untreated sewage from all vessels is prohibited to protect environmentally sensitive areas, including shellfish beds, coral reefs, and fish spawning areas, or drinking water sources. States can establish NDZs if they can demonstrate to U.S. EPA that safe and adequate pumpout facilities are available.

In 1988, due to inadequacies in the Newport Bay vessel waste program, the Santa Ana Regional Water Quality Control Board (Santa Ana Regional Board) adopted Resolution No. 88-89 and Order Nos. 88-83, 88-84, 88-85, 88-89, 88-91. Resolution No. 88-89 approved a vessel pumpout program for Newport Bay and the other orders required certain vessel terminals to install vessel pumpout facilities. These orders were neither waste discharge requirements nor enforcement actions, and no follow-up was done to determine compliance. Currently, these orders and the resolution are active and would need to be rescinded prior to any action by the State Water Resources Control Board (SWRCB).

Vessel sewage discharges could potentially impact the water contact recreation beneficial use for Newport Bay and Huntington Harbour, and the shellfish harvesting beneficial use for Newport Bay. Both water bodies were listed on the 1994 Clean Water Act section 303(d) list of impaired water bodies for bacterial contamination. In 1998, the Santa Ana Regional Board established a fecal coliform total maximum daily load (TMDL) to address bacterial contamination in Newport Bay. The TMDL includes a zero waste load allocation for vessel waste discharges, in recognition of the NDZ status of the Bay. No bacteria TMDL has yet been established for Huntington Harbour. Once established, however, the TMDL is expected to include a zero waste load allocation for vessel waste discharges, in light of the NDZ status of Huntington Harbour.

Surveys of vessel waste pumpout facilities by the Orange County CoastKeeper (OCCK) in October 2002, and by the Santa Ana Regional Board staff with OCCK in March 2003 revealed major problems in Newport Bay and Huntington Harbour. These problems include: a limited number of pumpout facilities; inoperable pumpout facilities; limited access to existing pumpout facilities; poor housekeeping; improper use of the pumpout facilities; lack of public education on proper use of pumpout facilities; and high bacteria levels in the water in the vicinity of the pumpout facilities. Further, Santa Ana Regional Board staff determined that there are no existing dump stations in Newport Bay or Huntington Harbour. Dump stations are used by boaters who have an on-board port-a-potty to receive and retain sewage in lieu of an installed sewage retention device.

California Harbors and Navigation Code (HNC) (Chapter 6, Division 3, commencing with Section 775) provides the statutory authority for the SWRCB, in coordination with Regional Water Quality Control Boards (Regional Boards), to develop and adopt standards for the location, construction, operation, and maintenance of vessel pumpout facilities and require installation of vessel waste pumpout facilities at vessel terminals. The HNC defines a vessel terminal as any private or shore-side installation on any waters of the state that provides mooring, docking, berthing, and other facilities for the use of vessels. The HNC further requires that every vessel terminal, as required by the Regional Board for the protection of the quality of the waters of the state, be equipped with vessel pumpout facilities for the transfer and disposal of sewage from marine sanitation devices. A marine sanitation device is defined in the HNC as any equipment on board a vessel which is designed to receive, retain, treat, or discharge sewage and any process to treat the sewage.

California Code of Regulations (CCR) (Title 23, Chapters 20 and 20.1) contains procedures for the SWRCB and Regional Boards to follow in requiring any person lawfully vested with the possession, management, or control of a marine terminal to provide adequate vessel sewage retention device pumpout capability at locations which are convenient and accessible to vessel users. The regulations include standards establishing criteria for the design, construction, operation, and maintenance of pumpout facilities and specifies administrative procedures to be followed to provide a standard method of determining which vessel terminals shall be required to install and operate these facilities. CCR, Chapter 20.1, Article 2, also requires Regional Boards to determine if there is a need for additional pumpout facilities. If there is found to be a need, the Regional Board is to request that the SWRCB require specified vessel terminals to install and operate the pumpout facilities where necessary to protect water quality. If the Regional Board determines that there is no public vessel terminal within an area in which additional pumpout facilities, the SWRCB is required to hold a hearing to determine whether private vessel terminals should be designated to provide pumpout facilities.

On August 22, 2003, the Santa Ana Regional Board approved Resolution No. R8-2003-0074 requesting the SWRCB to require implementation of the proposed "Recommended Vessel Sewage Disposal Program" (Program) which mandates that specific vessel terminal owners/operators install, operate and/or maintain pumpout facilities and dump stations in Newport Bay and Huntington Harbour. The recommended program requires three (3) additional pumpout facilities and three (3) dump stations in Huntington Harbour and five (5) additional pumpout facilities and three (3) dump stations in Newport Bay. The locations of the needed pumpout facilities and dump stations are specified in the Program. Further, to ensure the success of the vessel sewage waste program in Huntington Harbour and Newport Bay, the Santa Ana Regional Board recommended that vessel terminal owners/operators and/or responsible agencies implement an operation, maintenance, monitoring, and public education and outreach program.

The Program approved by the Santa Ana Regional Board requires the installation of pumpout facilities and dump stations in compliance with existing mandates of the HNC and applicable SWRCB regulations. In addition, the Program contains additional requirements pertaining to cost provisions, education and access, and live-aboard vessels. Although the SWRCB does not have the authority to require implementation of these additional provisions, the Santa Ana Regional Board can implement these provisions of the Program under their own authority, as appropriate.

The proposed General Order No. 2004-\_\_\_\_-DWQ specified vessel terminal owners/operators to install and operate vessel waste pumpout facilities and dump stations at the specified locations. The order includes an implementation schedule. Once approved, copies of the order will be sent to the Santa Ana Regional Board for implementation, the vessel terminal owner for compliance, and to other

within the area of activity.

SWRCB staff finds that issuance of a General Order requiring the installation and operation of vessel waste pumpout facilities and dump stations at specified vessel terminals is exempt from the requirement of the California Environmental Quality Act, Public Resources Code Section 21000 *et seq.* as an action to protect the environment (Title 14, CCR Section 15308) and the placement of minor structures accessory to existing institutional facilities (Title 14, CCR Section 15311).

## **POLICY ISSUE**

Should the SWRCB adopt the proposed General Order requiring owners and operators of specified vessel terminals located in Newport Bay and Huntington Harbour to install, maintain, and operate vessel waste pumpout facilities and dump stations?

## **FISCAL IMPACT**

This activity is budgeted within existing resources. No additional expenditures will occur as a result of adopting the proposed General Order.

## **RWQCB IMPACT**

The Santa Ana Regional Water Quality Control Board

## **STAFF RECOMMENDATION:**

That the SWRCB adopt the proposed General Order requiring owners and operators of specified vessel terminals located in Newport Bay and Huntington Harbour to install, maintain, and operate vessel waste pumpout facilities and dump stations